From: Folkers, Greg (NIH/NIAID) [E]
Sent: Wed, 4 May 2016 10:23:23 -0400
Subject: Appeals Court Says Trademark Bully/HIV Denialist Must Pay Defendant's Legal Fees http://bit.ly/1SMrOUM

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Trademark
by Tim Cushing
Tue, May 3rd 2016 11:23pm

Appeals Court Says Trademark Bully/HIV Denialist Must Pay Defendant's Legal Fees

from the *beating-back-the-bullies* dept

Almost three years ago,a team of pro bono attorneys (D. Gill Sperlein, Paul Alan Levy, Gary Krupkin and Neal Hoffman) took up the defense of Jeffrey DeShong, an HIV-positive blogger who had been served a bogus trademark infringement lawsuit by Clark Baker, a retired LAPD officer who spends his free time defending people who have hidden their HIV-positive status from sexual partners.

Baker had no legal basis for his claims, but was obviously hoping airy claims of Lanham Act violations based on URL similarities would be all that was needed to shut up a vocal critic. He was wrong. The lawsuit was tossed in the pleading stages by the district court and that decision was upheld by the Fifth Circuit Court.

What the appeals court did not address the first time around -- shifting legal fees to the vexatious litigant -- has now been addressed. The Fifth Circuit Court of Appeals, at the urging of DeShong's defense team, has taken a new approach to its standard for fee shifting in obviously bogus lawsuits. Paul Alan Levy explains:

The federal court in Dallas readily dismissed the trademark claims on the face of the complaint, then declined to retain jurisdiction over the state-law defamation claims; in that way, the trial judge avoiding having to address DeShong's anti-SLAPP motion. But even though our path to overruling the Fifth Circuit's rule got easier when the Supreme Court held, in Octane Fitness, that the term "exceptional cases" in the Patent Code is not limited to lawsuits brought in bad faith, the trial judge was unwilling to buck clear Fifth Circuit precedent: he denied our fee motion relying on the Fifth Circuit's bad faith standard. Today, however, the Fifth Circuit held that its previous bad faith standard (and its requirement of clear and convincing evidence) has been effectively superseded by the Supreme Court's ruling in Octane Fitness. Henceforth, "an exceptional case is one where (1) in considering both governing law and the facts of the case, the

case stands out from others with respect to the substantive strength of a party's litigating position; or (2) the unsuccessful party has litigated the case in an 'unreasonable manner.'" This new standard will make it easier for defendants facing SLAPP-type lawsuits to retain counsel, as there's a significantly better chance for fee awards once courts have examined the case. Levy, however, notes that this won't help much in *this* lawsuit, as the trademark bully filed for bankruptcy while the appeal was pending. This not only means it's highly unlikely the $50,000 in fees requested will ever make their way to DeShong's defense team, but the filing also allowed Baker to drag out the appeals process for an additional year.

This outcome doesn't help the defense team's bottom line but for free speech defenders like Paul Levy and his partners in this case, the precedent set here is the bigger win. This should act as a deterrent against future acts of censorship-via-litigation in the Fifth Circuit's jurisdiction and lays another brick on the path towards a unified judicial stance against censorship through litigation.

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From: Folkers, Greg (NIH/NIAID) [E]
Sent: Tue, 14 Jan 2014 14:23:10 -0500
Subject: Atlanta J-C: Jury selection underway in HIV case

Posted: 2:37 p.m. Monday, Jan. 13, 2014

Jury selection underway in HIV case

By Tammy Joyner
The Atlanta Journal-Constitution

Jury selection is underway in the case of a Clayton County man who has been charged with knowingly exposing women to HIV.

A national group that disputes the reliability of HIV testing has come to his defense, making the case one of dozens nationally that put the tests on trial.

Craig Lamar Davis faces two counts of reckless HIV, a felony under Georgia law punishable by up to 10 years in prison.

Davis, who lives in south Fulton, was arrested in July 2012 by Atlanta police. A Union City woman told authorities that Davis had sex with her four times before telling her he was infected with HIV, according to the initial report filed with Clayton police. The incidents were alleged to have taken place at a home in Clayton between May and June of 2012.

Davis also faces similar charges in Fulton County involving a different woman.

Forty-two potential jurors were being interviewed Monday about their views on sex and their familarity with HIV.

Clark Baker, founder and director of the Office of Medical and Scientific Justice, a Los Angeles-based nonprofit, contacted Davis' attorney, John Turner, offering his organization's help for free.

"We expect this case will corroborate what we've found in all of our other cases … and that is the testing, diagnosis and treatment of HIV in this country is wildly inaccurate and inflated and incompetent," Baker said.

The prosecution says in an indictment that "after obtaining knowledge of being infected with HIV," Davis "did knowingly engage in sexual intercourse" with the woman without disclosing that he was HIV-positive.

However, Turner said, "The whole thing is going to boil down to whether the state can prove he's HIV-positive. We don't believe the state will be able to conclusively show that my client is HIV-positive."

Baker, a retired Los Angeles police officer, said his group concluded that "there's no evidence or symptoms at all of HIV infection in Mr. Davis."

Baker said his group has been involved in more than 100 HIV-related criminal cases since its inception in 2009. Many of the cases are still open, but of the 60 that have been concluded, he said, the group has been on the winning side in 57.

From: Folkers, Greg (NIH/NIAID) [E]
Sent: Mon, 10 Jun 2013 07:00:49 -0400
Subject: Buffalo News: HIV test, justness of law likely to color Williams' trial

HIV test, justness of law likely to color Williams' trial

Nushawn Williams finished 12-year sentence in '10.

By Jay Tokasz | News Staff Reporter

on June 8, 2013 - 7:52 PMNushawn Williams, the Jamestown man who gained national notoriety when accused of spreading the virus that causes AIDS, remains behind bars more than 15 years after his criminal offenses in Chautauqua County.

But when a 20-year-old Buffalo man admitted in 2011 to having unprotected sex with four young women and a 15-year-old girl while knowing he was infected with HIV, he was sentenced to a year in jail for his crimes.

"It was similar enough to say, 'My God, the treatment was so different,' " said John R. Nuchereno, defense attorney for Williams.

Williams, now 36, was supposed to be freed in 2010, upon completing a 12-year sentence for a statutory rape and reckless endangerment conviction.

Yet, three years later, he remains in Wende State Correctional Facility because the state attorney general contends Williams is a sexual predator likely to infect others with HIV.

The trial, while not open to the public, is expected to draw plenty of interest, both from civil liberties groups troubled by the state's civil confinement policy and from various HIV and AIDS organizations intrigued by the potential legal impacts of the case.

Nuchereno already has made the stunning claim in a pretrial hearing that Williams does not have HIV, based on a recent electron microscope analysis of his blood by the University of Massachusetts School of Medicine.

The contention appears likely to be a crux of Williams' defense, which is being aided by the Office of Medical and Scientific Justice, a nonprofit organization based in Studio City, Calif. The group runs the HIV Innocence Project and has used electron microscopy results in military trials to help defend soldiers accused of transmitting the virus to sexual partners.

G. Baron Coleman, an Alabama lawyer connected with the Office of Medical and Scientific Justice who has represented several soldiers, is expected to assist Nuchereno in at least a portion of his defense of Williams.

Lawyers from the Attorney General's Office questioned the legitimacy of the electron microscope test and asked State Supreme Court Justice John L. Michalski to allow them to do their own analysis of Williams' blood.

Rules of law prohibited Michalski from agreeing to the request.

But several medical professionals and HIV experts contacted by The News said the electron microscope was not an accepted method for finding HIV or for monitoring a patient infected with the virus.

"Electron microscopy is not, never has been and never will be an appropriate, relevant or approved way to detect HIV in the blood. Indeed, it's beyond silly suggesting it could, would or should be used for this purpose," said John Moore, professor of microbiology and immunology at Weill Cornell Medical College in New York City.

'A little bit out of left field'

Williams' blood was analyzed in April by Gregory M. Hendricks, manager of the Core Electron Microscopy Facility at the UMass Medical School, who found "no evidence" of HIV, according to a letter he sent to the Office of Medical and Scientific Justice.

Dr. Joseph S. Cervia, clinical professor of medicine and pediatrics at Hofstra North Shore-LIJ School of Medicine, noted that blood tests screening for the presence of HIV antibodies have been used reliably for years to determine whether someone has HIV.

HIV, AIDS 'denialists'

Seth Kalichman, an HIV and AIDS prevention and treatment researcher, expressed concern that the startling legal strategy in the Williams case will mislead people about accepted science with regard to diagnosing and treating HIV.

The Office of Medical and Scientific Justice and its executive director, Clark Baker, are HIV and AIDS denialists, Kalichman said.

And he said their efforts are potentially damaging to public health.
“They have no credibility. They’re not really scientists at all,” Kalichman said.
The organization has become adept at trying to manipulate juries in court-martial cases by raising suspicions about HIV tests and the influence of big pharmaceutical companies, he said.
And that’s potentially destructive, because some people who test HIV positive can’t deal with the reality and will seek out the misinformation put out by AIDS denialists as a source of comfort, said Kalichman.
“These guys provide them with a way out,” he said. “There have been people who have died because they listened to these people.”

HIV status matters

Baker, though, contends that the standard tests to detect HIV are unreliable and useless and that the electron microscope “is the only device that will see” the virus.
“If he’s infected with it, why wouldn’t it be there?” said Baker, who began examining Williams’ case in 2010.
Baker said he looked through hundreds of pages of Williams’ medical records and found no evidence of a proper HIV diagnosis.
“If you’re going to accuse somebody of being infected with HIV, you’d better have some evidence,” he said.
Authorities accused Williams of infecting at least 13 young Chautauqua County females, including a 13-year-old and a 15-year-old.
The case never went to trial, so the public didn’t get a close look at the criminal evidence against him.
Nuchereno said his client has been contacted over the years by numerous groups that “have offered assistance, including mainline HIV organizations because they see this as criminalization of a disease.”

Law affected plea deal

After completing his prison term for his admitted sex crimes, Williams now is subject to a law that was passed nearly eight years after he pleaded guilty with the understanding that he would be released from prison in no more than 12 years.
In effect, the plea deal has changed, even though Williams never consented to the changes.
“It’s really unforgiveable in 2013. This application of the law is informed by grossly outdated misunderstandings of HIV, and the state should really be ashamed about it,” said Catherine Hanssens, executive director of the Center for HIV Law & Policy in New York City.
Hanssens said we still don’t know “who infected who” in the Williams case, and the state’s civil confinement law makes it possible for anyone with HIV to be held indefinitely for infecting a sexual partner.
But Burstein maintained that the state has a case no matter what Williams’ HIV status may be because of Williams’ “known predatory behavior with young girls.”
“Regardless of whether he was positive or negative, that’s just unconscionable,” she said.
“Developmentally, 13- and 15-year-olds don’t have the cognitive ability to understand what they’re consenting to.”
Thomas Shevory, who wrote a book chronicling the media spectacle around the case, said he has no idea whether the current legal strategy will persuade a jury.
But Shevory, who has kept in contact with Williams, is convinced Williams is not a threat and that he wants to get out of jail, get a job and be with his wife and four children in Virginia.

“At this point, for what he’s accused of, even if he’s guilty – which I’m not convinced of – 15 years is long enough,” said Shevory.
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